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Calls for Accountability

Will It Help the Overall Incentives Process?

Competitive pressures from neighboring states as well as other countries make it more critical for jurisdictions to focus on economic development, while they continue to pursue accountability measures.

To promote economic development and other goals, a variety of tax incentives and grants have been in use for decades at all levels of government.

These incentives serve to entice and support businesses that have the potential to bring jobs, suppliers, tax revenues, a cleaner environment, and other benefits to a jurisdiction. Despite years of use, questions about incentives continually arise, such as: What are the best design features and strategies? Do the benefits outweigh the costs? How should benefits and costs be measured? How and when should effectiveness be measured? Would lower tax rates be simpler and more efficient than tax incentives?

This article looks at one aspect of incentives—accountability measures. That is, policies and procedures that help stakeholders know whether the requirements for a particular incentive have been met. State and local governments employ a variety of techniques to address accountability considerations, and this discussion examines the rationale for these varied techniques and their advantages and disadvantages (these benefits and detriments are summarized in Exhibit 1). Also discussed are several recent developments in incentives and accountability measures, along with information that indicates state and local governments will continue to pursue incentives, as well as accountability measures.

The Accountability Era

It should not be surprising that the information age has brought about both greater calls for accountability and transparency, as well as efforts by elected officials and government agencies to provide them. Technology allows for data to easily be analyzed and sorted in a variety of ways. Information can be provided electronically by taxpayers and posted on government websites to let anyone know how dollars are being spent.

"This is your money." Greater calls for accountability at all levels of government are likely to follow from the Obama Administration's efforts to inform the public on how federal stimulus funds are being used. Upon enactment of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5, 2/17/09), the White House Office of Management and Budget (OMB) issued a memo to all federal agencies, noting the creation of a website (www.recovery.gov) to allow for an "unprecedented level of transparency and accountability so Americans know where their tax dollars are going and how they are being spent." Agencies must report regularly on how they are spending monies allocated in the stimulus bill. The website is designed to enable "citizens to hold the government accountable for every dollar spent."[1]

As stated on recovery.gov: "Accountability and Transparency—This is your money. You have a right to know where it's going and how it's being spent. Learn what steps we're taking to ensure you can track our progress every step of the way."

Missouri Governor Jay Nixon followed the White House lead with a website detailing how federal stimulus dollars received in Missouri are being used. The website encourages viewers to "check back often for updates" and allows them to subscribe to updates.[2]

While disclosure is but one accountability technique, the openness and ease of availability of information may lead to calls by voters and lawmakers for additional information on the results achieved for the jurisdiction through the various incentives it offers. There also are grassroots groups and national and local nonprofit organizations, such as "Good Jobs First," that encourage governments to use tax dollars wisely and to publicly account for that usage.[3]

Incentives and the Recession

Almost all states are facing budget shortfalls during the current recession.[4] Despite the budget concerns, states are likely to continue or even expand incentives to retain and attract local jobs. For example, in his "State of the State" address, Missouri Governor Nixon said he would increase funding for the state's job development and training programs by almost 40%. In that same address, he noted that his budget proposal called for reductions and cuts in 50 programs and the elimination of over 1,300 state positions.[5]

Similarly, legislation passed in February 2009 to close a $41 billion shortfall in California's budget included reductions in state spending on education and other programs. Still, the budget act included a single sales factor apportionment option to support business retention. In addition, a new credit for film and television production was added, along with a temporary credit for small businesses that create new jobs.[6]

In a recession, incentives receive added attention from all stakeholders: lawmakers, businesses, and consumers/voters. Tough economic times exacerbate the tension state and local governments face between the need for revenues and the need to encourage businesses to move to, expand in, or simply remain in the state or city. In a recession, government revenues drop, unemployment rises, and some businesses struggle to stay afloat. Lawmakers are likely to push for changes to stimulate the economy and keep jobs in their jurisdiction. Meanwhile, voters are likely to demand greater accountability for any special tax provisions or grants for businesses, particularly if enacted in a bill that increases taxes on consumers or reduces funding for government services.

What Drives Incentives

Understanding the driver of an incentive—why it was created—is important in designing the accountability measure. To gain a better appreciation of the types of accountability measures a jurisdiction needs, consider two key reasons for incentives—competition and meeting goals.

Competition. State and local jurisdictions compete with other jurisdictions for a business base in the state. It is fairly common to read in the local newspaper about a business leaving or entering the state due to a better deal than anything offered by its prior location. For example, in early 2009, it was reported that the Hershey Company was closing its distribution plant in Redlands, California, where it employed 90

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workers, to relocate to Ogden, Utah, where it was offered a $2.6 million tax incentive.[7]

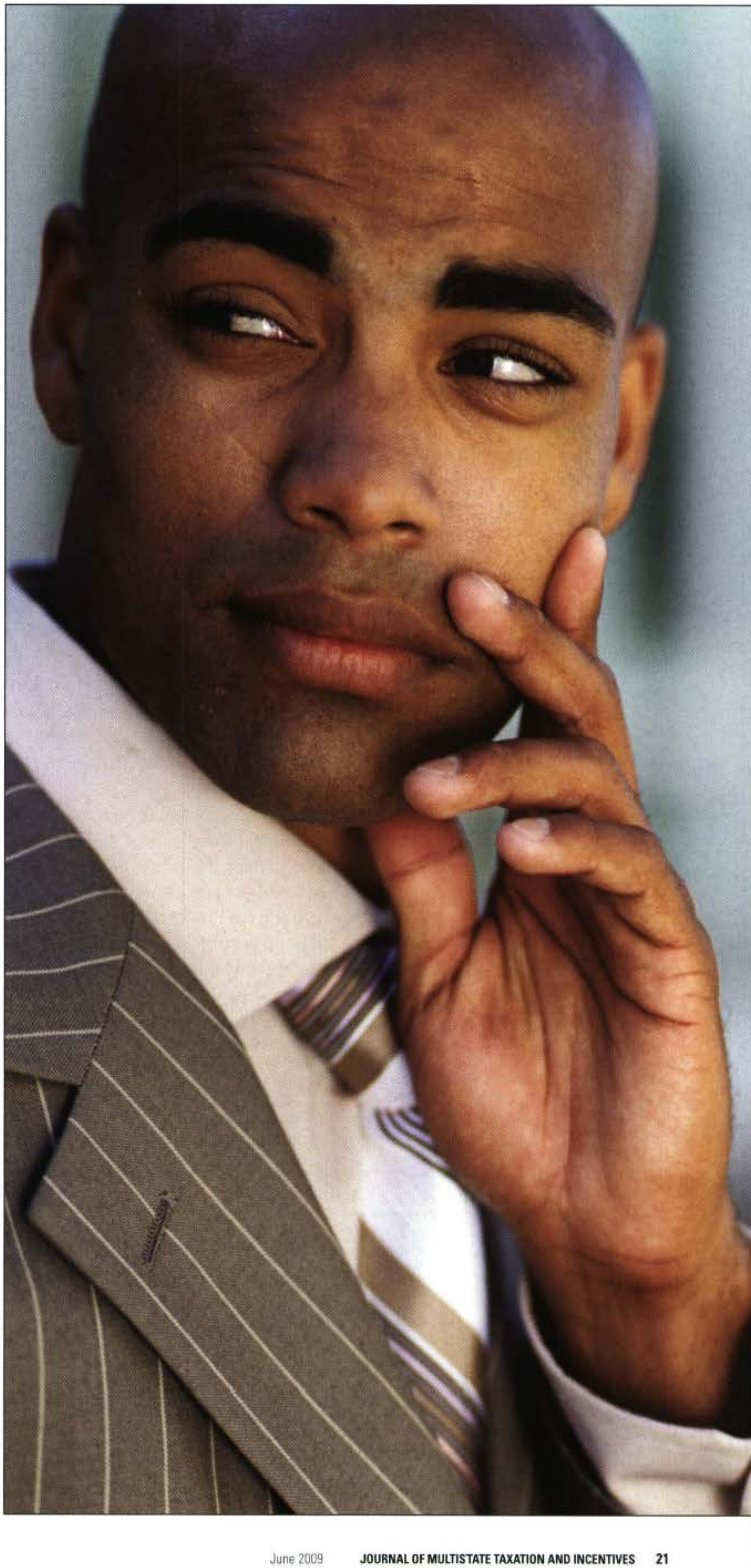
To ensure a strong tax base, employment opportunities, and a healthy economy, states and cities need a business base. Businesses that do more than serve their local communities can often be located anywhere. Thus, states are vulnerable to losing businesses—and their future growth—should another state look more attractive. The cost of doing business, including tax costs, is one of several important factors governing business location decisions.

Businesses are often well aware of their opportunities for alternative locations because they receive information from various economic development offices or see advertisements touting the benefits of operating in another jurisdiction. Also, businesses can easily find surveys that rank states in terms of business climate, tax burden, and costs of doing business. For example, the Tax Foundation publishes an annual ranking of states based on their business tax climate. The introduction to the Foundation's 2009 survey refers to tax competition as the "unpleasant reality" that elected officials face.[8] These types of surveys help both businesses and lawmakers in learning about tax structures and operating costs in other states. This information can aid lawmakers in the design of their tax structures including any tax incentives.

Actual and perceived tax burdens in a state also drive tax incentives. Various surveys and data compilations exist to help businesses compare tax liabilities among the states and to help policymakers understand how their state compares to others. For example, the Federation of Tax Administrators tracks tax rates, tax bases, and other tax system features among the states.[9]

A study prepared by Ernst & Young LLP and the Council On State Taxation (COST) compares business tax burdens among the states.[10] The information is presented by type of tax and by different types of industries. This information also helps businesses make decisions on where to expand their operations and whether the costs of operations in their current locations can be lowered by moving elsewhere. Again, this information also serves lawmakers in reviewing their tax systems to determine if reforms are warranted for economic development purposes.

Goals. State and local government goals for economic growth, standard of living, and environmental quality also drive the



types of tax systems and incentives they will put in place. For example, a state that wants more high technology companies to locate within its boundaries could design a set of tax incentives and grants tailored to that industry. If a state wanted to preserve landfill space, it could offer incentives to companies that provide new recycling services.

The factors that affect the creation of incentives shape not only the object and design of the incentives but also the accountability measures. Jurisdictions are likely to find not only that they need accountability measures to ensure that specific incentives go to businesses that meet the requirements but also that the incentives as a whole are helping the state to meet its economic, societal, and environmental goals. This view is reflected in trends in accountability measures that today include not only measures at the specific incentive level, such as recapture of a jobs credit if the jobs do not last for the required time period, but also measures that analyze the macro effects of all of the incentives and tax system design.

The Need for Accountability

While accountability often conjures up thoughts of someone looking over your shoulder or seeking reasons to deny a benefit, it is nevertheless an important aspect in any decision for directing funds to a particular use.

Executive compensation analogy. Accountability in the incentives arena is analogous to what a business might do in designing a compensation package for an executive. Company X might use a signing bonus to entice an executive to leave his or her current job and take a new one at X. Arguably, this upfront payment is risky because the executive might not work out. Still, it is deemed reasonable due to the significance of the change X asked of the executive and the risk the executive assumed. Other incentives are likely to be performance-based, such as stock options and bonuses tied to meeting specific goals.

The executive's compensation package likely will include annual performance reviews, repayment of incentives for misrepresentations, and some protections for not meeting targets if due to reasons beyond the executive's control, such as a natural disaster or an economic downturn. In designing the compensation package, X's advisers will consider the company's short- and long-term goals and the need for accountability to shareholders.

Problems from inadequate accountability. Perhaps as frequently as the newspapers report companies exiting from or moving to a state on account of some incentives package, other reports disclose governments wasting funds on incentives that appear to have provided no benefit to the jurisdiction.

Lack of accountability can jeopardize incentives because with no data on use and effectiveness, the incentives are vulnerable to repeal given the ease of arguing that their costs exceed the benefits produced. In addition, the purpose and goals of an incentive should be adequately stated up front so that accountability can occur. Otherwise, an incentive might be called into question, as its supporters tout how wonderful it has been while doubters counter that it has not lived up to its promise. For example, in California, some businesses state that enterprise zone incentives have worked effectively to stimulate the economy.[11] In contrast, the California Legislative Analyst's Office has recommended that the enterprise zone incentives be phased out because they have not been shown to be cost effective in generating new economic activity in the state.[12] This extreme dichotomy of views likely indicates a lack of sufficient data and specificity of goals to allow for effective accountability, rather than an ineffective incentive.

A 2005 report on Kentucky's economic development program noted that most of the spending was not evaluated, meaning that no one knew if it worked. The report also noted that many of the incentives expenditures "happened under the radar ... buried in state tax law," and thus were "not out in the open, subject to the public scrutiny of the state budget process."[13] The report made recommendations to improve accountability and the strategies used for economic development.

Challenges of accountability. Accountability is not without its challenges. These include:

- Ensuring that the goals for economic development and other incentives are clearly articulated so they can be appropriately measured.
- Identifying the appropriate measures that are timely, cost-effective, and feasible for data collection.

1 "Memorandum for the Heads of Departments and Agencies" (OMB memo, M-09-10, 2/18/09), available online at the OMB website at www.recovery.gov/files/Initial%20Recovery%20Act%20Implementing%20Guidance.pdf. The memo explains the details and frequency of required reporting by federal agencies.

2 This Missouri website is available at http://transform.mo.gov/transparency/.

3 Good Jobs First is a nonprofit, national policy organization that strives to promote corporate and government accountability in economic development programs and "smart growth for working families," as described on the organization's website, www.goodjobsfirst.org (select "About Us"). In addition to reports on tax incentives and accountability, the group runs a blog called "Clawback" (http://clawback.org/).

4 Lav and McNichol, "State Budget Troubles Worsen" (Center on Budget and Policy Priorities, updated 3/13/09), available on the Center's website at www.cbpp.org/9-8-08sfp.htm. Founded in 1981, the Center is a policy organization that conducts research and analysis at the federal and state levels on fiscal policy and public programs that affect low- and moderate-income families and individuals. This report notes that at least 47 states face budget shortfalls in 2009 and/or 2010.

5 See "2009 State of the State Address" (1/27/09), available on the governor's website at http://governor.mo.gov/ (select "Newsroom—Speeches").

6 S.B. 1 and S.B. 15, 2/20/09 (3d Ex. Sess., chs. 1 and 17). Also see "The 2009 Budget Act," available on the website of the California Department of Finance, at www.dof.ca.gov/ (select "California Budget," "Historical Documents," and click on "Summary Document for 2009 Budget Act").

7 Oberbeck, "Hershey Closes Center in California After Move to Ogden Facility," The Salt Lake Tribune, 3/13/09; available via the newspaper's website at www.sltrib.com/Business/ci_11907794.

8 Barro, "2009 State Tax Business Climate Index (Sixth Edition)" (The Tax Foundation, 10/6/08), available via the organization's website at www.taxfoundation.org/ (select "Research Areas," "State Business Tax Climate Index," and click on Barro's 10/6/08 report). The Tax Foundation, founded in 1937, is a nonpartisan tax research group based in Washington, D.C. Its mission, according to its website, is "to educate taxpayers about sound tax policy and the size of the tax burden borne by Americans at all levels of government."

9 State tax comparison data can be found on the Federation's website at www.taxadmin.org (click on "State Comparisons"). As described on its website, the FTA (a membership organization representing all 50 state tax agencies, plus the District of Columbia, New York City, and Puerto Rico), seeks to "improve the quality of state tax administration by providing services to state tax authorities and administrators," including "research and information exchange, training, and intergovernmental and interstate coordination." The FTA "also represents the interests of state tax administrators before federal policymakers where appropriate."

10 Philips, Cline, and Neubig, *Total State and Local Business Taxes: 50 State Estimates for Fiscal Year 2008* (January 2009), prepared by EY's Quantitative Economics and Statistics Practice (QUEST), in conjunction with COST; available via the COST website at www.cost.org (select "State Tax Library," "COST Studies, Articles & Reports," and click on "FY08 State and Local Business Tax Burden Study").

11 See, e.g., "California Enterprise Zone Program Positive, Effective State Policy" (California Chamber of Commerce, 5/1/08), available via the organization's website at www.calchamber.com (select "News & Events," "Top Story Archives," "2008," and look under "Economy").

- Managing the costs to businesses and governments of collecting and reporting data.

The first challenge noted above was summarized well by the Vermont Department of Finance and Management in its 2009 "Unified Economic Development Budget Report," as follows: "[T]he primary hurdle that prevented us from being able to provide the data necessary to allow the Legislature to evaluate which programs meet their economic goals and provide true value-added results in the 2007 report remain a hurdle in 2009—namely, a lack of clear and measurable goals for each initiative/program. Without these goals and a direct connection to the overall economic development goals of the State, it will remain difficult to formulate complete and meaningful performance measures."[14]

The Nature of Accountability Techniques

The approaches employed to ensure that incentives are used as intended and meet the specified goals for their creation are quite varied. Some incentives include more than one accountability technique and some have no accountability requirement directly associated with them. Also, an accountability measure might be fairly narrow, such as requiring a

EXHIBIT 1
Advantages and Disadvantages of Various Types of Accountability Measures

Type of Measure	Advantages	Disadvantages
Specificity of qualifications	• Businesses know up front what they need to do to qualify for the incentive. • For tax incentives, the regular audit processes of a jurisdiction's tax agency can verify compliance. • Drafting of the qualifications should lead lawmakers to consider the goals of the particular incentive. • May involve a reporting form to help the business know if it qualifies for the incentive. The form may be useful for reporting and disclosure purposes.	• For tax incentives, accountability through specificity of qualifications may lead to audit difficulties for tax agencies if the qualifications involve areas that are not normally part of a tax audit or within the auditor's expertise.
Approval process	• Provides an opportunity for the granting agency to obtain all of the information needed to determine if a business qualifies for an incentive. • Enables a business to know up front that it is eligible for the incentive.	• Can cause a delay in granting the incentive. • The process may be expensive, although a fee can be charged to offset some of the cost. • May require additional employees or processes.
Monitoring	• Can catch compliance and eligibility problems early. • Can enable data to be collected that may be useful in evaluating the need for funding or qualification changes.	• Can be expensive and require additional employees and processes.
Clawbacks and similar techniques	• Allows the business to get the funds up front when needed. • Can include interest and/or a penalty to compensate the state for the time-value of money. • Can help the jurisdiction meet its goals by making additional funds available for businesses that will meet the specified goals.	• Repayment of funds already spent can cause hardship to the company and its employees and suppliers, although waiver provisions may alleviate some of this hardship. • Requires some type of monitoring and reporting system to identify when disqualification occurs.
Sunsets	• For tax incentives, allows for an opportunity to evaluate the effectiveness of the incentive. • Sends a clear message to businesses as to when action must be taken to receive the incentive, although deadlines can be specified in other measures as well.	• Sunset provisions do not always call for the collection of data, which would help with the evaluation of the incentive. • May allow an ineffective incentive to remain in operation longer than it should.
Public disclosure	• Provides information to all stakeholders to help them better understand a jurisdiction's budget and economic development plans.	• May be a deterrent to some businesses' applying for incentives. • May not provide enough details to show how the funds benefited the jurisdiction.
Analysis for stakeholders	• Allows for a higher level and broader review of incentives, rather than looking only at each type of grant, tax expenditure, and other incentives in isolation. • Should allow for analysis of how a jurisdiction's budget, tax system, and economic development strategies need to work together for the benefit of all stakeholders. • Allows for more information to be made available to the public.	• Can be time-consuming and costly to prepare. • May not provide meaningful information if the goals for programs are not clearly articulated or easily measured.

business to report the number of new jobs it created in order to claim a jobs credit. Or, the measure may be part of a larger accountability plan that might look at not only the number of jobs created but also the wages, term of employment, and fringe benefits provided.

The following categories are used for purposes of describing and providing examples of accountability measures for business incentives:

- Specificity of qualifications.
- Approval process.
- Monitoring.
- "Clawbacks" and similar techniques.
- Sunsets.
- Public disclosure.
- Analysis for stakeholders.

The following discussion explains each of these types of measures that serve, to varying degrees, to ensure that the purpose of the incentive is met; examples are also provided. Table 1 summarizes advantages and disadvantages of each type of accountability measure.

Specificity of qualifications. The wording of the incentive provision can contain very specific requirements that are included because they ensure that a business meeting the qualifications is one that will help the jurisdiction meet the goals established for the incentive. For example, legislation enacted in Kansas in 2007 allows a company to elect to use a single sales factor for apportionment, if the company is a qualified manufacturer that satisfies all the following requirements by 12/31/09:

- Constructs a new plant in Kansas costing at least $100 million.
- Hires at least 100 new employees at the plant.
- Pays its workers higher-than-average wages.[15]

North Carolina touts its incentives as being "performance-based."[16] In 2006, the state enacted new tax credits for "growing businesses" that were designed to be more narrowly focused on job creation and business investment.[17] To claim the new credits, taxpayers must meet specific qualifications that include the following:

- The taxpayer's primary business activity must be in one of 12 specified categories, which include manufacturing, wholesale trade, R&D, and company headquarters. The company headquarters activity will qualify for a credit only if the taxpayer creates at least 75 new jobs there during a 24-month timeframe.
- The business must meet a wage standard specified in the statute.
- Full-time workers in positions for which the credit is claimed must be provided with health insurance for which the employer covers at least 50% of the premiums.
- The taxpayer must not have any current pending actions or, within the last five years, any final determinations of responsibility, based on significant violations of any state environmental agency programs.
- The taxpayer must not have had any Occupational Safety and Health Act (OSHA) citations within the prior three years for willful serious violations or for failing to abate such violations.
- The taxpayer must not have any outstanding tax liabilities.

Research tax credits offered by most states are another example of an incentive with qualification features that help ensure that the incentive's stated goals are met. Generally, tax statutes define qualifying R&D and require that it be performed in the state granting the credit.

Approval process. Some types of incentives are granted only after a business applies for the incentive and indicates how it met the requirements. The application is reviewed by the appropriate agency and if the applicant meets the requirements, the benefit (in the form of, e.g., a cash grant or a tax credit) is awarded. The award might be based on a fixed amount or a sliding scale tied to the applicant's specific needs and qualifications.

The Texas Enterprise Fund (TEF), described as a "deal-closing" fund, provides money for various economic development purposes. According to the state's website, proposed projects must demonstrate why they deserve funding, and must "maximize the benefits to the State of Texas and realize a significant rate of return of the public dollars being used for the economic development of Texas."[18]

The TEF application calls for information on existing and projected jobs in Texas, wage data, the sources and amounts of projected capital investment, and a project timeline. In addition, an "economic impact analysis" report must be attached that explains the economic and fiscal impacts of the project construction and annual operation. Evaluation criteria also include the company's history, the level of local support for the project, and the availability other funding sources. Finally, the proposal must be approved unanimously by the governor, lieutenant governor, and speaker of the state house.[19]

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[12] *The 2008-09 Budget: Perspectives and Issues* (Cal. Legislative Analyst's Office), page 116, available on the LAO website at www.lao.ca.gov/analysis_2008/2008_pandi/pandi_08.pdf. The LAO is overseen by the California legislature's Joint Legislative Budget Committee, and has been providing fiscal and policy advice to the legislature for more than 65 years. According to its website, the LAO "is known for its fiscal and programmatic expertise and nonpartisan analyses of the state budget. The office serves as the 'eyes and ears' for the Legislature to ensure that the executive branch is implementing legislative policy in a cost efficient and effective manner."

[13] "Accounting for Impact: Economic Development Spending in Kentucky," (Mountain Association for Community Economic Development, September 2005), quoting the Executive Summary; available on the organization's website at www.maced.org (select "Research and Policy: Publications"). As described on its website, MACED serves Kentucky and Central Appalachia through financial investment and technical assistance to local businesses. The organization also conducts research and strives to create effective economic development tools to solve local problems.

[14] "Unified Economic Development Budget Report 2009," (Vt. Dept. of Finance and Management, 2/5/09), page 2; available via the Vermont legislature's website at www.leg.state.vt.us (select "Reports Submitted to the Legislature").

[15] S.B. 240, 3/20/07. According to Kansas Governor Sebelius' press release issued upon signing the bill, the incentive might entice Hill's Pet Nutrition, already a local employer, to build a new plant in Kansas. See "Kansas Seeks New Hill's Pet Nutrition Facility" (Office of the Governor, 3/20/07), available online at www.governor.ks.gov (select "Press Releases," "Archive—March 2007").

[16] North Carolina Department of Commerce website at www.nccommerce.com/en (select "Business Services—Locate Your Business," "Why NC?," "Incentives").

[17] H.B. 2170, 8/17/06 (Sess. Law No. 2006-252, effective for tax years beginning after 2006), codified at N.C. Gen. Stat. § 105-129.80 *et seq.* As explained by the legislature, these new credits were intended to replace credits available under the William S. Lee Quality Jobs and Business Expansion Act. For some background, see, e.g., Hannah, "Commerce and Revenue Departments Vie for Control of North Carolina's Lee Act Incentive Program," 14 JMT 26 (Mar/Apr 2004).

[18] See the "Economic Development" home page on the website of the Office of the Governor, at www.governor.state.tx.us/ecodev (select "Financial Resources," "Texas Enterprise Fund").

[19] *Id.*, click on "Download the Application."

[20] Ark. Code Ann. § 15-4-2705. Also see the website of the Arkansas Economic Development Commission at http://arkansasedc.com (select "Business Development," "Incentives," "Investment and Job Creation Incentives," and click on "Advantage Arkansas"). For more on the Advantage Arkansas program, see also Partain, "Arkansas: Legislation Creates County Tier system, Incentives Based on Payroll, Not Jobs," 13 JMT 38 (Nov/Dec 2003).

[21] See the website of the Energy Conservation and Management Division of the New Mexico Energy, Minerals, and Natural Resources Department, at www.emnrd.state.nm.us/ecmd (select "Clean Energy Incentives" and click on "Solar Market Development Tax Credit").

Another example of the use of an approval process to help ensure that a business qualifies for an incentive is the Advantage Arkansas credit for job creation. In addition to submitting an application, a business also must meet annual payroll thresholds for its new full-time permanent employees.[20]

Approval processes may serve also as a mechanism to allocate limited funds. For example, New Mexico's solar tax credit is available only to the extent of $5 million each year, and applications for the credit must be approved by the authorities. The application process also serves to have the applicant agree to use its solar energy system for a minimum of five years and to allow the Energy Conservation and Management Division to inspect the system.[21]

Monitoring. For tax incentives, one monitoring technique is the prospect of an audit by the state or local tax agency. For both tax incentives and grants, a business also may be required to file special annual reports.

Washington offers a reduced Business and Occupation (B&O) tax rate for manufacturers of certain solar energy systems. The taxpayer must file an annual report by March 31 following any year in which the reduced tax rate is used. The enacting legislation offers the following rationale for this reporting requirement: "The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used."[22]

This annual report must include information detailing employment, wages, and

employer-provided health and retirement benefits for each job at the manufacturing facility, as well as the total number of full-time, part-time, and temporary positions. A business that fails to file the report will owe tax at the full B&O tax rate (rather than the reduced rate), plus interest.[23] The taking back of a tax incentive is a type of accountability measure known as a "clawback," discussed next.

Clawbacks and similar techniques. A "clawback" is a requirement that a taxpayer repay all or part of an incentive, possibly along with some type of penalty. Clawbacks can come into play when a taxpayer fails to meet all of the requirements for a particular incentive. For example, the business may not have hired the required number of new workers or failed to employ the new workers for the required time period, or it did not make a large enough capital investment in equipment or other property or it moved the property out-of-state. Typically, any clawback provision is included in the same statute as that which created the incentive.[24]

The North Carolina "growing businesses" tax credits (noted above) include a forfeiture provision that comes into play if it turns out that the taxpayer did not meet the eligibility criteria. Forfeiture results in the taxpayer's having to repay all prior credits along with interest. If the tax and interest are not paid within 30 days after the forfeiture date, penalties apply.[25]

[22] S.B. 5111, 5/6/05 (ch. 301, Laws of 2005, effective 7/1/05), codified at Wash. Rev. Code § 82.32.620.

[23] *Id.*

[24] Additional information on, and examples of, clawback provisions can be found in Norat and Lomoriello, "Clawbacks: A Help or a Hindrance in Negotiating Incentive Benefits?" 13 JMT 24 (February 2004). Also see "Examples of Clawback Provisions in State Subsidy Programs," on the Good Jobs First website at www.goodjobsfirst.org/pdf/clawbacks_chart.pdf.

[25] N.C. Gen. Stat. § 105-129.83(i).

[26] Ohio Rev. Code Ann. § 122.17(E),

[27] Illinois Corporate Accountability for Tax Expenditures Act, 20 ILCS § 715/1 *et seq.* The recapture rules are in § 715/25, and the waiver provision is § 715/25(b).

[28] N.C. Gen. Stat. § 105-129.82(a). The statute also calls for the state's Department of Commerce to study the effectiveness of the incentives and their effect on tax equity, and to file biennial reports with the general assembly on the results of the studies, along with recommendations. *Id.*, § § 105-129.82(b), (c), and (d).

[29] S.B. 5111, *supra* note 22. The sunset provision is codified at Wash. Rev. Code § 82.04.294(4).

Some incentive provisions include requirements for the incentive to be reduced, returned, recalibrated, or recaptured, with or without a penalty, if not all the requirements for the incentive are satisfied or the business takes an action that disqualifies it, such as reducing its workforce or moving equipment out of state. Some of these readjustment provisions include a waiver requirement allowing the jurisdiction to modify the repayment for hardship.

One example of a recalibration measure is included in Ohio's grants and tax credits to foster job creation. This incentive, which provides refundable tax credits, includes a provision allowing the tax credit authority to modify the incentive agreement by reducing the percentage or term of the tax credit if the taxpayer fails to comply with any requirement set forth in the credit agreement.[26]

As part of Illinois' accountability statute, all economic development agreements must include recapture provisions, which require a taxpayer that fails to meet all of the conditions for a particular credit to repay to the state all or a portion of the credit. This Illinois requirement includes a waiver option, which allows the Director of Revenue to waive enforcement of any provision of the development assistance agreement in order to avert "an imminent and demonstrable hardship to the recipient that may result in such recipient's insolvency or discharge of workers."[27]

Sunsets. Some tax incentives include a sunset or expiration date. Tax incentives typically are not subject to the same annual budget scrutiny as are grant programs. That is, once the special exclusion, deduction, or credit is added to the tax law, it remains. There is no need to approve funding for the provision in future years.

Including a sunset date for a tax incentive adds some measure of accountability by requiring that attention be paid to the provision's effectiveness when considering whether to renew it. Legislative review of an incentive to determine whether it should be renewed may include an analysis of the costs and benefits of the provision, whether it is still needed, and if so, what changes might be made to improve its effectiveness.

The North Carolina "growing businesses" tax credits (noted above) include a sunset provision under which the credits are repealed after 2010.[28] Washington's reduced B&O tax rate incentive, available to certain manufacturers of solar energy systems (as discussed above), sunsets on 6/30/14. The enacting legislation also includes a requirement that by 12/1/13, the Department of Revenue provide the legislature with a report that measures the effects of the incentive, including the total number of solar energy system manufacturing companies in the state, any change in the number of such companies, the effect on job creation, and the number of jobs created for Washington residents.[29] The presumption is that such data will help the legislature decide whether to renew the reduced tax rate incentive, and if so, whether any modifications are warranted.

Public disclosure. Public disclosure of incentives can take many forms. Sometimes, the benefits claimed are reported in summary form without taxpayer names or other identifying information. Alternatively, the state may publish many details including business names and locations. Also, some reports may be posted on the jurisdiction's website. For example, the Texas Enterprise Fund provides online access to a table that includes the names of the companies that obtained grant funds, the capital investment by the company, the funds the company received from the state, the estimated benefit to the state, and any amounts returned to the state via the clawback provision.[30]

The North Carolina "growing businesses" tax credits require that the Department of Revenue publish annual reports for each 12-month period ending on the prior December 31, with specified information, itemized by credit and taxpayer, including, e.g.:

- The quantity and dollar amount of each type of credit claimed.
- The number of jobs created and the investment in business property with respect to which credits were claimed.[31]

In 2008, Rhode Island enacted legislation requiring the Department of Revenue to issue a public report disclosing the businesses receiving tax credits such as those under Incentives for Innovation and Growth, the Jobs Development Act, the Distressed Areas Economic Revitalization Act, or the Motion Picture Production Tax Credits. The report lists the names and addresses of the recipients and the type and dollar amount of credit claimed.[32] Companies receiving the credits are required to file an annual disclosure form with the Division of Taxation by August 15.[33]

The national policy organization Good Jobs First tracks disclosure practices of the

30 This TEF table is available via the "Economic Development" home page on the website of the Office of the Governor, at www.governor.state.tx.us/ecodev (select "Financial Resources," "Texas Enterprise Fund," and click on "TEF Grant Listing"). More information on the TEF is available also at www.texaswideopenforbusiness.com (select "Financial Resources" and "Texas Enterprise Fund").

31 N.C. Gen. Stat. § 105-129.85(b).

32 H.B. 7953, 7/2/08 (P.L. No. 2008-165), and S.B. 2661, 7/2/08 (P.L. No. 2008-173). Also, see "Press Release: First Annual Tax Credit Disclosure Report Issued" (9/11/08), available on the Rhode Island government website at www.ri.gov/press/view/7115. To see the report, click on "Tax Disclosure 2008 List."

33 Rhode Island Form TC-100, "Tax Credits and Incentives Disclosure Form," available via the Department of Revenue's Division of Taxation website at www.tax.ri.gov (select "Forms" and "Miscellaneous Tax Forms").

34 See Mattera, Walter, Blain, and Lee, "The State of State Disclosure: An Evaluation of Online Public Information About Economic Development Subsidies, Procurement Contracts and Lobbying Activities" (Corp. Research Project of Goods Jobs First, November 2007), page 11, available via the "State Disclosure Page" on the organization's website, at www.goodjobsfirst.org/news/article.cfm?id=375.

35 Illinois Corporate Accountability for Tax Expenditures Act, *supra* note 27. The budget provisions are in 20 ILCS § 715/10. All data in this budget presented to the general assembly "shall be fully subject to the Freedom of Information Act." *Id.*

36 See "Texas Economy In Focus—SB275 Economic Development Reports: January 2009," online at www.texasahead.org/economy/sb275. Texas Ahead, a website provided by the Texas Comptroller of Public Accounts, is, according to the site, "a new one-stop Web portal providing key statistics and other information on matters of interest to economic development professionals and local officials." The legislation, S.B. 275, Laws 2001, is codified at Tex. Gov't Code § 403.030.

37 "Unified Economic Development Budget Report 2009," *supra* note 14.

38 *Id.*, page 4.

39 *Id.*, page 3.

40 See the "Economic Development and Fiscal Accountability Act," available via the Good Jobs First website at www.goodjobsfirst.org (select "Accountable Development—Model Legislation" and click on "model subsidy reform legislation").

41 A listing of state incentives for renewable energy can be found at the "Database of State Incentives for Renewables & Efficiency" (DSIRE), available online at www.dsireusa.org. Established in 1995, DSIRE is an ongoing project of the North Carolina Solar Center and the Interstate Renewable Energy Council (IREC), funded by the U.S. Department of Energy (DOE). As described on the website, DSIRE is a comprehensive source of information on state, local, utility, and federal incentives that promote renewable energy and energy efficiency. Federal incentives also can be found on the DOE website: see "Tax Breaks for Businesses, Utilities, and Governments" at www.energy.gov/additionaltaxbreaks.htm.

42 JMT has featured coverage of various states' incentives for film/video production, most recently in Bible, Hays, and Parker, "Louisiana Offers Income Tax Credits for Motion Picture and Television Productions," 17 JMT 24 (June 2007). For more on this topic generally, see Garrison, "State Tax and Other Incentives for Motion Picture and Television Production," 15 JMT 30 (June 2005). See also Bible, Hays, and Parker, *id.*, at fn.4, for citations to earlier JMT articles reporting on some film production incentives offered worldwide.

43 Norat and Lomoriello, *supra* note 24.

states. In a 2007 study, the organization found that 23 states had posted information online regarding the use of economic development incentives, although such disclosure often did not cover all of a state's incentives.[34]

Analysis for stakeholders. Measures to ensure that a single specific incentive is used as intended generally are not enough to help a jurisdiction reach the broader goals for such incentives. Given the tight budgets within which lawmakers must operate, jurisdictions seeking funds to support business growth need to be sure they are getting the "biggest bang for their buck." Thus, rather than looking only at whether particular taxpayers added the requisite numbers of jobs to qualify for a credit, many jurisdictions are using or moving to accountability approaches that look at the big picture to help answer such questions as whether a jobs tax credit is the most effective technique for attracting new businesses and retaining existing ones. A broader perspective and analysis might also include consideration of whether rate reductions would be more effective than tax credits and whether tax burdens fall unevenly on different industries; such considerations may warrant broader tax reform than solely adding a new credit to the tax law.

One approach to a broader and more in-depth analysis on the effectiveness of incentives is through the use of a "unified development budget" or "unified economic development budget." Such a budget looks at all types of incentives, including grants and tax expenditures. While some states create such annual reports, it is not clear to what degree lawmakers are able to, or actually do, use the information to improve business incentives and tax structures. Also, the varied sources of incentives and, often, the lack of clear goals for particular incentives and tax provisions can make it difficult to get a good picture of how a state budget supports business growth and retention. Despite the limitations, several states do prepare some type of unified development budget.

For example, Illinois' Corporate Accountability for Tax Expenditures Act, enacted in 2003, calls for an annual "Unified Economic Development Budget" described as follows: "The Unified Economic Development Budget ... shall present all types of development assistance granted during the prior fiscal year, including: (1) The aggregate amount of uncollected or diverted State tax revenues resulting from each type of development assistance provided in the tax statutes, as reported to the Department of Revenue on tax returns filed during the fiscal year [and] (2) All State development assistance."[35]

Texas also requires an annual economic development report. Legislation adopted in 2001 requires the Comptroller of Public Accounts to collect information and report on "state government expenditures supporting economic development, Texas Growth Fund investments, information on local economic development corporations, state tax exemptions and tax incidence, franchise tax credit claims, and impacts of tax exemptions."[36]

Vermont prepared its third Unified Economic Development Budget in January 2009.[37] The report includes a significant amount of data on various economic development programs, as well as a description of the programs. There is little analysis of the effectiveness of the programs, however. The Department of Finance and Management, which drafted the report, noted the need to create a better set of measurable objectives for programs. The Department stated: "A review of the current programs and their stated goals, show that in general, their goals are broad, and hard to measure."[38] Among its recommendations, the Department noted that the report should focus on activities that are funded directly by the state, while also including information from the state Economic Development Authority on its loan subsidy programs and from the Department of Taxes on economic development-related tax expenditures.[39]

The Vermont Department of Finance and Management's recommendation to look broadly at all uses of funds for incentives and assistance is similar to what some nonprofit organizations have suggested. For example, model accountability legislation formulated by Good Jobs First calls for states to report on all uses of tax revenues including credits, exemptions, reductions, and abatements. The model act also calls for reporting of all economic development activity by all agencies within a state.[40]

Looking Forward

The information age and the scarcity of resources in government budgets will make accountability and transparency of business incentives a higher priority for lawmakers, businesses, and voters. At the same time, competitive pressures from not only neighboring states but also other countries, make it more critical for jurisdictions to focus on economic development. Increasing globalization of business and the ability to provide an appropriate infrastructure to encourage economic development will pose challenges for most jurisdictions.

Likely future developments with respect to accountability measures for business incentives include the following:

- Identifying appropriate accountability measures for new types of business incentives, such as the growing number of grants, credits, and special deductions for renewable energy[41] and film production.[42]
- Articulation or re-articulation of a jurisdiction's goals appropriate for 21st Century ways of living and doing business, where borders are not as important as they once were, capital and labor are more mobile, and services and some "goods" can be provided digitally from any location.
- Responding to calls from grassroots organizations, lawmakers, businesses, and voters regarding the need to have economic development together with an appropriate infrastructure that considers living standards and the need for a well-educated workforce.
- Improvements to accountability measures that take a macro perspective rather than just a micro perspective on single incentives. States using "unified economic development budgets" have learned the types of information needed and how that information can be used to improve economic development practices to make them as effective as possible in meeting a jurisdiction's needs.

As noted in an earlier JMT article on clawbacks: "Government incentives are not going away."[43] To that can be added: Calls for accountability are not going away either. ■